

AMENDED IN SENATE APRIL 22, 2009

**SENATE BILL**

**No. 337**

---

**Introduced by Senator Alquist**

February 25, 2009

---

*An act to amend Section 14011.16 of, to amend and repeal Section 14005.25 of, and to repeal Sections 14011.17 and 14011.18 of, the Welfare and Institutions Code, relating to Medi-Cal. An act to amend Section 1280.15 of the Health and Safety Code, relating to health facilities.*

LEGISLATIVE COUNSEL'S DIGEST

SB 337, as amended, Alquist. ~~Medi-Cal: continuous eligibility: semiannual status reports. Patient medical information: disclosure: reporting.~~

*Existing law establishes provisions for the licensing and certification of clinics, health facilities, home health agencies, and hospices under the jurisdiction of the State Department of Public Health. Existing law prohibits these entities from unlawfully accessing, using, or disclosing a patient's medical information, and authorizes the department to assess administrative penalties for violations. Existing law also requires these entities to report instances of unlawful access, use, or disclosure of a patient's medical information, as prescribed, within 5 days of detecting it.*

*This bill would specify that this period is 5 business days.*

*This bill would require a clinic, health facility, home health agency, or hospice to delay reporting the unlawful access, use, or disclosure of a patient's medical information beyond 5 business days, as specified, if a law enforcement agency or official provides a written or oral statement that compliance with the reporting requirements will impede*

*the law enforcement agency's activities and specifying the date upon which the delay shall end, as prescribed.*

~~Existing law establishes the Medi-Cal program, administered by the State Department of Health Care Services, under which basic health care services are provided to qualified low-income persons. The Medi-Cal program is partially governed and funded under federal Medicaid provisions.~~

~~Existing law, until January 1, 2012, requires the department, subject to the availability of federal financial participation, to exercise a federal option to expand continuous eligibility to children 19 years of age and younger for 6 months, after which date the continuous eligibility period shall be from the date of a determination of eligibility to the earlier of either the end of a 12-month period following the eligibility determination or the date the child exceeds 19 years of age.~~

~~This bill would eliminate the provisions limiting continuous eligibility to 6 months, would make those provisions that become operative on January 1, 2012, applicable commencing January 1, 2010, and would make conforming changes.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 1280.15 of the Health and Safety Code  
2     is amended to read:  
3     1280.15. (a) A clinic, health facility, home health agency, or  
4     hospice licensed pursuant to Section 1204, 1250, 1725, or 1745  
5     shall prevent unlawful or unauthorized access to, and use or  
6     disclosure of, patients' medical information, as defined in  
7     subdivision (g) of Section 56.05 of the Civil Code and consistent  
8     with Section 130203. The department, after investigation, may  
9     assess an administrative penalty for a violation of this section of  
10    up to twenty-five thousand dollars (\$25,000) per patient whose  
11    medical information was unlawfully or without authorization  
12    accessed, used, or disclosed, and up to seventeen thousand five  
13    hundred dollars (\$17,500) per subsequent occurrence of unlawful  
14    or unauthorized access, use, or disclosure of that patients' medical  
15    information. For purposes of the investigation, the department  
16    shall consider the clinic's, health facility's, agency's, or hospice's  
17    history of compliance with this section and other related state and

1 federal statutes and regulations, the extent to which the facility  
2 detected violations and took preventative action to immediately  
3 correct and prevent past violations from recurring, and factors  
4 outside its control that restricted the facility's ability to comply  
5 with this section. The department shall have full discretion to  
6 consider all factors when determining the amount of an  
7 administrative penalty pursuant to this section.

8 (b) (1) ~~A-Subject to subdivision (c), a clinic, health facility,~~  
9 ~~home health agency, or hospice to which subdivision (a) applies~~  
10 ~~shall report any unlawful or unauthorized access to, or use or~~  
11 ~~disclosure of, a patient's medical information to the department~~  
12 ~~no later than five business days after the unlawful or unauthorized~~  
13 ~~access, use, or disclosure has been detected by the clinic, health~~  
14 ~~facility, home health agency, or hospice.~~

15 (2) ~~A-Subject to subdivision (c), a clinic, health facility, home~~  
16 ~~health agency, or hospice shall also report any unlawful or~~  
17 ~~unauthorized access to, or use or disclosure of, a patient's medical~~  
18 ~~information to the affected patient or the patient's representative~~  
19 ~~at the last known address, no later than five business days after~~  
20 ~~the unlawful or unauthorized access, use, or disclosure has been~~  
21 ~~detected by the clinic, health facility, home health agency, or~~  
22 ~~hospice.~~

23 (c) (1) *A clinic, health facility, home health agency, or hospice*  
24 *shall delay the reporting of any unlawful or unauthorized access*  
25 *to, or use or disclosure of, a patient's medical information beyond*  
26 *five business days if a law enforcement agency or official provides*  
27 *the clinic, health facility, home health agency, or hospice with a*  
28 *written or oral statement that compliance with the reporting*  
29 *requirements of subdivision (b) would be likely to impede the law*  
30 *enforcement agency's activities and specifies a date upon which*  
31 *the delay shall end.*

32 (2) *If the statement of the law enforcement agency or official is*  
33 *made orally, then the clinic, health facility, home health agency,*  
34 *or hospice shall do the following:*

35 (A) *Document the oral statement, including, but not limited to,*  
36 *the identity of the law enforcement agency or official making the*  
37 *oral statement and the date upon which the oral statement was*  
38 *made.*

39 (B) *Limit the delay in reporting the unlawful or unauthorized*  
40 *access to, or use or disclosure of, the patient's medical information*

1 to the date specified in the oral statement, not to exceed 30  
2 calendar days from the date that the oral statement is made, unless  
3 a written statement that complies with the requirements of this  
4 subdivision is received during that time.

5 (3) A clinic, health facility, home health agency, or hospice  
6 shall submit a report that is delayed pursuant to this subdivision  
7 not later than five business days after the date designated as the  
8 end of the delay.

9 ~~(e)~~

10 (d) If a clinic, health facility, home health agency, or hospice  
11 to which subdivision (a) applies violates subdivision (b), the  
12 department may assess the licensee a penalty in the amount of one  
13 hundred dollars (\$100) for each day that the unlawful or  
14 unauthorized access, use, or disclosure is not reported, following  
15 the initial five-day period specified in subdivision (b). However,  
16 the total combined penalty assessed by the department under  
17 subdivision (a) and this subdivision shall not exceed two hundred  
18 fifty thousand dollars (\$250,000) per reported event.

19 ~~(d)~~

20 (e) In enforcing subdivisions (a) and ~~(e)~~ (d), the department  
21 shall take into consideration the special circumstances of small  
22 and rural hospitals, as defined in Section 124840, and primary care  
23 clinics, as defined in subdivision (a) of Section 1204, in order to  
24 protect access to quality care in those hospitals and clinics. When  
25 assessing a penalty on a skilled nursing facility or other facility  
26 subject to Section 1423, 1424, 1424.1, or 1424.5, the department  
27 shall issue only the higher of either a penalty for the violation of  
28 this section or a penalty for violation of Section 1423, 1424,  
29 1424.1, or 1424.5, not both.

30 ~~(e)~~

31 (f) All penalties collected by the department pursuant to this  
32 section, Sections 1280.1, 1280.3, and 1280.4, shall be deposited  
33 into the Internal Departmental Quality Improvement Account,  
34 which is hereby created within the Special Deposit Fund under  
35 Section 16370 of the Government Code. Upon appropriation by  
36 the Legislature, moneys in the account shall be expended for  
37 internal quality improvement activities in the Licensing and  
38 Certification Program.

39 ~~(f)~~

(g) If the licensee disputes a determination by the department regarding a failure to prevent or failure to timely report unlawful or unauthorized access to, or use or disclosure of, patients' medical information, or the imposition of a penalty under this section, the licensee may, within 10 days of receipt of the penalty assessment, request a hearing pursuant to Section 131071. Penalties shall be paid when appeals have been exhausted and the penalty has been upheld.

~~(g)~~  
(h) In lieu of disputing the determination of the department regarding a failure to prevent or failure to timely report unlawful or unauthorized access to, or use or disclosure of, patients' medical information, transmit to the department 75 percent of the total amount of the administrative penalty, for each violation, within 30 business days of receipt of the administrative penalty.

~~(h)~~  
(i) Notwithstanding any other provision of law, the department may refer violations of this section to the ~~office~~ Office of Health Information Integrity for enforcement pursuant to Section 130303; ~~except that if Assembly Bill 211 of the 2007–08 Regular Session is not enacted, the department may refer violations to the Office of HIPAA Implementation.~~

~~(i)~~  
(j) For purposes of this section, the following definitions shall apply:

(1) "Reported event" means all breaches included in any single report that is made pursuant to subdivision (b), regardless of the number of breach events contained in the report.

(2) "Unauthorized" means the inappropriate access, review, or viewing of patient medical information without a direct need for medical diagnosis, treatment, or other lawful use as permitted by the Confidentiality of Medical Information Act (Part 2.6 (commencing with Section 56) of Division 1 of the Civil Code) or any other statute or regulation governing the lawful access, use, or disclosure of medical information.

~~SECTION 1. Section 14005.25 of the Welfare and Institutions Code, as amended by Section 27 of Chapter 758 of the Statutes of 2008, is amended to read:~~

~~14005.25. (a) To the extent federal financial participation is available, the department shall exercise the option under Section~~

~~1902(c)(12) of the federal Social Security Act (42 U.S.C. Sec. 1396a(e)(12)) to extend continuous eligibility to children 19 years of age and younger. A child shall remain eligible pursuant to this subdivision from the date of a determination of eligibility for Medi-Cal benefits until the earlier of either:~~

~~(1) The end of a 12-month period following the eligibility determination.~~

~~(2) The date the individual exceeds the age of 19 years.~~

~~(b) This section shall be implemented only if, and to the extent that, federal financial participation is available.~~

~~(c) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the department shall, without taking regulatory action, implement this section by means of all county letters or similar instructions. Thereafter, the department shall adopt regulations in accordance with the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.~~

~~SEC. 2. Section 14005.25 of the Welfare and Institutions Code, as added by Section 28 of Chapter 758 of the Statutes of 2008, is repealed.~~

~~SEC. 3. Section 14011.16 of the Welfare and Institutions Code is amended to read:~~

~~14011.16. (a) Commencing August 1, 2003, the department shall implement a requirement for beneficiaries to file semiannual status reports as part of the department's procedures to ensure that beneficiaries make timely and accurate reports of any change in circumstance that may affect their eligibility. The department shall develop a simplified form to be used for this purpose. The department shall explore the feasibility of using a form that allows a beneficiary who has not had any changes to so indicate by checking a box and signing and returning the form.~~

~~(b) Beneficiaries who have been granted continuous eligibility under Section 14005.25 shall not be required to submit semiannual status reports. To the extent federal financial participation is available, all children under 19 years of age shall be exempt from the requirement to submit semiannual status reports.~~

~~(c) Beneficiaries whose eligibility is based on a determination of disability or on their status as aged or blind shall be exempt from the semiannual status report requirement described in subdivision (a). The department may exempt other groups from~~

1 the semiannual status report requirement as necessary for simplicity  
2 of administration.

3 ~~(d) When a beneficiary has completed, signed, and filed a~~  
4 ~~semiannual status report that indicated a change in circumstance,~~  
5 ~~eligibility shall be redetermined.~~

6 ~~(e) Notwithstanding Chapter 3.5 (commencing with Section~~  
7 ~~11340) of Part 1 of Division 3 of Title 2 of the Government Code,~~  
8 ~~the department shall implement this section by means of all county~~  
9 ~~letters or similar instructions without taking regulatory action.~~

10 ~~Thereafter, the department shall adopt regulations in accordance~~  
11 ~~with the requirements of Chapter 3.5 (commencing with Section~~  
12 ~~11340) of Part 1 of Division 3 of Title 2 of the Government Code.~~

13 ~~(f) This section shall be implemented only if and to the extent~~  
14 ~~federal financial participation is available.~~

15 ~~SEC. 4. Section 14011.17 of the Welfare and Institutions Code~~  
16 ~~is repealed.~~

17 ~~SEC. 5. Section 14011.18 of the Welfare and Institutions Code~~  
18 ~~is repealed.~~